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99TH CONGRESS
2d Session

SENATE

REPORT
99-234

ORIGINAL

AMENDING SECTION 901 OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT

FEBRUARY 6 (legislative day, JANUARY 27), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 3851]

The Committee on Energy and Natural Resources, to which was referred the act (H.R. 3851), to amend section 901 of the Alaska National Interest Lands Conservation Act, having considered the same, reports favorably thereon without amendment and recommends that the act do pass.

PURPOSE OF THE MEASURE

H.R. 3851, as reported, amends section 901 of the Alaska National Interest Lands Conservation Act to defer for 1 year a statute of limitations on legal challenges to ownership of submerged lands in Alaska conveyed by the United States pursuant to the Alaska Native Claims Settlement Act.

BACKGROUND AND NEED

The treatment of submerged lands under the innumerable lakes and streams of Alaska has presented many problems as the Department of the Interior has attempted to implement the Alaska Statehood Act and the Alaska Native Claims Settlement Act (ANILCA).

Upon admission to the Union (pursuant to the Submerged Lands Act of 1953 (67 Stat. 29)), Alaska gained ownership of the beds of navigable rivers and lakes unless they were reserved prior to Statehood. These submerged lands do not count against the State's total entitlement under the Statehood Act.

As the Department of the Interior proceeds to transfer lands to the Native Corporations under the Settlement Act, the Department

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must make a judgement as to whether bodies of water within the Native-selected tracts are navigable, in which case the bottom is held to belong to the State and is not counted against the total to which the Natives are entitled; otherwise it is transferred to the Natives as part of their entitlement. But, if the State later should maintain and a court should decide that the Department was wrong in holding some waters not navigable, the result would be to give the land to the State and possibly even to deprive the Natives of part of their total entitlement. As a result, the Natives have had to challenge many Interior Department determinations of non-navigability involving water within Native selections.

Section 901 of ANILCA sets deadlines for any challenges of a non-navigable determination by BLM. A civil action must be filed within five years after the date of execution of the interim conveyance if the interim conveyance was executed after enactment of ANILCA, or within seven years if executed before enactment. The State of Alaska has brought an action in U.S. District Court challenging the constitutionality of this statute of limitations. That suit is still pending.

the first deadline under the statute of limitations in section 901 is approaching. Unless the provision is ruled invalid or is changed, the State of Alaska must decide early this year whether to file numerous lawsuits challenging conveyances to Native Corporations and groups since December 2, 1980. A year's extension would give opposing parties an opportunity to reach a settlement.

Legislative History

H.R. 3851 was introduced on December 4, 1985. The measure passed the House on December 12, 1985 by voice vote. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on H.R. 3851 on January 30, 1986. The Administration, in testimony, recommends enactment of H.R. 3851.

At a business meeting on February 6, 1986, the Senate Committee on Energy and Natural Resources ordered H.R. 3851 favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on February 6, 1986, by unanimous vote of a quorum present recommends that the Senate pass H.R. 3851 without amendment.

The rollcall vote on reporting the measure was 18 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield	
Mr. Weicker*	
Mr. Domenici*	
Mr. Wallop	
Mr. Warner*	
Mr. Murkowski*	
Mr. Nickles	

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Mr. Hecht
Mr. Evans
Mr. Johnston
Mr. Bumpers*
Mr. Ford
Mr. Metzenbaum
Mr. Melcher
Mr. Bradley*
Mr. Bingaman*
Mr. Rockefeller*

*Indicates vote by proxy

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 3851. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 3851 as reported.

Executive Communications

The pertinent legislative reports received by the committee from the Department of the Interior setting forth executive agency recommendations relating to H.R. 3851 are set forth below:

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

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SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
FEB 06 1986
WASHINGTON, D.C. 20510

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on H.R. 3851, an act "To amend section 901 of the Alaska National Interest Lands Conservation Act."

We recommend the enactment of H.R. 3851.

H.R. 3851 would extend, for one year, the five-year statute of limitations established by section 901 of the Alaska National Interest Lands Conservation Act (ANILCA) covering the initiation of lawsuits challenging navigability decisions by the Secretary of the Interior as they apply to those conveyances of submerged lands to Native corporations that were made after the passage of ANILCA.

Since the passage of the Act of May 18, 1796, it has been the law that the title to lands bordering on nonnavigable streams extends to the center of the streams. Further, in 1891, in the case of Hardin v. Jordan, 140 U.S. 371, the Supreme Court decided that the title of grantees of lands bordering on nonnavigable lakes or ponds extends to the center of the lake or pond. The Department has applied these principles consistently to land conveyances in both the lower 48 states and Alaska, except as to selections by the State of Alaska under the Alaska Statehood Act and to selections by Native Corporations under the Alaska Native Claims Settlement Act (ANCSA).

Thus, when a State or other entity, other than the State of Alaska or a Native Corporation, was entitled to select a certain amount of land which included land covered by nonnavigable waters, the grantee was not charged for the submerged lands when the acreage of the remaining entitlement was calculated. This longstanding policy is reflected in the Bureau of Land Management's (BLM) Manual of Surveying Instructions (Manual), which includes instructions for meandering rivers and lakes and calculating the acreage of fractional sections. The Manual provides that navigable bodies of water, as well as all lakes equal to or larger than 50 acres, and streams and rivers equal to or wider than three chains (198 feet), are to be excluded from the public lands.

Section 6 of the Alaska Statehood Act allowed the State of Alaska to select 103.35 million acres of vacant, unappropriated, unreserved public land. That Act also provided that the State took title to submerged lands beneath navigable waters that had not been reserved to the United States under the Submerged Lands Act or other law. However, section 6(g) of the Alaska Statehood Act provides that where lands selected by the State are unsurveyed, the Secretary of the Interior is to survey the exterior boundaries of the selected area and issue a patent for such selected area in terms of the exterior boundary survey. In accordance with this

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instruction, BLM surveyed only the perimeter of the State's selections and did not meander the submerged lands within the selected areas.

Under ANCSA, Native corporations were entitled to select 44 million acres of public lands. In this context, the Department interpreted the term "public lands" to include submerged lands beneath nonnavigable waters.

A final determination as to the navigability of a body of water can only be made by a court, and such judicial determinations have never been issued on the overwhelming majority of lakes and rivers in Alaska. Thus, the BLM, in its efforts to convey the lands that have been selected by the State and the Native corporations, has been required to make initial determinations as to the navigability of hundreds of lakes and rivers.

If BLM found that a body of water within a Native selection is navigable, the land underlying the water body was held to belong to the State and was not charged against the Native corporation's entitlement. If the water body was found to be nonnavigable, the selected lands were conveyed to the Native corporation and charged against its entitlement - an apparent contradiction of the Department's longstanding policy in the lower 48 states. Similarly, when the State made selections of lands containing nonnavigable bodies of water, BLM charged the submerged lands against the State's entitlement.

As a result, the navigability and nonnavigability of water bodies, and the chargeability of submerged lands have been issues of contention since the enactment of the Alaska Statehood Act and ANCSA. In particular, the State believes that the water bodies covering many of the submerged lands that have been conveyed to the Native corporations are navigable, and that the involved lands should have been recognized as having been granted to the State by the Statehood Act. Native corporations have found it necessary to challenge the initial navigability decisions to insure that they will not be deprived of any portion of their entitlements.

Further, the State and the Native corporations have long contended that the Manual should be followed when lands in Alaska are conveyed. The Native corporations have also asserted that they should not be charged for federally-owned submerged lands which they have selected.

In an attempt to resolve submerged lands inequities, the involved parties negotiated a new policy concerning the chargeability of submerged lands. The new policy was published in the Federal Register on December 5, 1983, and was subsequently reiterated in a March 28, 1984, Memorandum of Understanding between the State of Alaska and the Department of the Interior, and in a final rulemaking amending the provisions of the Alaska Native Selection regulations (43 CFR 2650) that was published in the Federal Register on April 19, 1985.

The basic provisions of the new policy are—

- Submerged lands beneath all water bodies shall be meandered in accordance with the principles in the Bureau of Land Management's Manual of Surveying Instructions. Whenever feasible, photogrammetry is to be used in surveying meander lines and planimetry is to be used for acreage computations of the upland lots on plats of survey.

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- Alaska Native corporations and the State shall not be charged for submerged lands beneath water bodies that are meandered in accordance with the new policy (i.e., in accordance with the Manual or subsequent regulations).

- Those beds of tidal waters which were reserved to the United States at the time of statehood and are less than 50 acres or three chains in width will not be meandered and will be charged against Native and State entitlements.

Implementation of the new policy is having the following benefits:

- The Native corporations and the State are not receiving less land than Congress specified, since there is no charge for submerged lands that are meandered.

- Treatment of landowners in Alaska is consistent with the treatment of landowners in the lower 48 states.

- There is less likelihood that protracted litigation will occur, thus reducing delays in issuing conveyances.

- Since the State, the Native Corporations, and the Department of the Interior have concurred in the new policy, a major source of friction has been removed.

The problem concerning navigability decisions was addressed by the Congress in section 901 of ANILCA, which established time frames and procedures for challenging such decisions. Specifically, section 901(a) provides that the ownership by a Native corporation or Native group of a parcel of submerged land conveyed to such corporation or group pursuant to either ANILCA or ANCSA, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to a judicial determination unless a civil action is filed in the United States District Court within five years after the date of the execution of the involved conveyance, if the conveyance was executed after December 2, 1980, the date of enactement of ANILCA. A seven-year statute of limitations applies if the conveyance of patent was executed before the date of enactment of ANILCA.

Although the new policy concerning the chargeability of submerged lands has eliminated many of the problems associated with conveyances of selected lands in Alaska, the problem concerning navigability decisions remains unresolved. At issue are BLM's navigability decisions and their effect of hundreds of conveyances made to Native corporations and the State.

The five-year statute of limitations established by section 901(a) began to run on December 2, 1985. However, the State has not made a final determination as to which decisions or conveyances it wishes to challenge. Thus, the State must either challenge all the conveyances that are subject to the five-year statute of limitations, or risk the possibility of being precluded from challenging some of the conveyances and decisions.

Extension of the five-year statute of limitations for one year, as proposed by H.R. 3851, would help to resolve the State's problem, and would also benefit BLM. In this instance, we support extending the statute of limitations for one year. The additional year would be used by the State to select those conveyances and decisions it wishes to challenge. Presumably, the selected conveyances and decisions will be fewer than the total number of conveyances and decisions which

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the State could challenge. The resulting decrease in the number of suits that would be filed would also decrease the administrative costs that would be incurred by BLM in defending its navigability decisions. In addition, it is expected that the Federal courts will clarify the definition of navigability during the upcoming year. Finally, in general, we supppрt any measure that would decrease the possibility of litigation. Thus, we recommend the enactment of H.R. 3851.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. STEVEN GRILES

ASSISTANT SECRETARY

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CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 96-487—DEC. 2, 1980

(94 Stat. 2430)

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TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

SEC. 901. (a) Notwithstanding any other provision of law, the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to the Alaska Native Claims Settlement Act or this Act, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to judicial determination unless a civil action is filed in the United States District Court within [five] *six* years after the date of execution of the interim conveyance if the interim conveyance was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the interim conveyance was executed on or before the date of enactment of this Act. If a parcel of submerged land was conveyed by a patent rather than an interim conveyance, the civil action described in the preceding sentence shall be filed within [five] *six* years after the date of execution of the patent if the patent was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the patent was executed on or before the date of enactment of this Act. The civil action described in this subsection shall be a de novo determination of the ownership of the parcel which is the subject of the action.

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